

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: PACIFIC FERTILITY CENTER
LITIGATION

Case No. 18-cv-01586-JSC

PROPOSED VERDICT FORM

We the jury answer the questions submitted to us as follows:

I. CLAIM 1: MANUFACTURING DEFECT

1. Did Tank 4 contain a manufacturing defect when it left Chart's possession?

____ Yes ____ No

If your answer to question 1 is yes, answer question 2. If you answered no, do not answer question 2 and go to question 3.

2. Was the manufacturing defect a substantial factor in causing harm to Plaintiffs?

Rosalynn Enfield: ____ Yes ____ No

Laura Parsell: ____ Yes ____ No

Kevin Parsell: ____ Yes ____ No

Chloe Poynton: ____ Yes ____ No

Adrienne Sletten: ____ Yes ____ No

Proceed to question 3.

II. DESIGN DEFECT

CLAIM 2: CONSUMER EXPECTATIONS TEST

3. Did Tank 4 fail to perform as safely as an ordinary user of cryogenic storage tanks would have expected when used or misused in an intended or reasonably foreseeable way?

____ Yes ____ No

Regardless of your answer to question 3, proceed to question 4.

CLAIM 3: RISK BENEFIT TEST

4. Did the benefits of the tank's design outweigh the risks of the design?

____ Yes ____ No

- *If you answered yes to either question 3 or question 4, answer question 5.*
- *If you answered no to both question 3 and question 4, but yes to question 2 (as to any plaintiff), proceed to question 6.*
- *If you answered no to question 2 (as to each plaintiff), question 3, **and** question 4, skip questions 5-7, and proceed to question 8.*

5. Was the tank's design a substantial factor in causing harm to plaintiffs?

Rosalynn Enfield: ____ Yes ____ No

Laura Parsell: ____ Yes ____ No

Kevin Parsell: ____ Yes ____ No

Chloe Poynton: ____ Yes ____ No

Adrienne Sletten: ____ Yes ____ No

Proceed to question 6.

III. CHART'S AFFIRMATIVE DEFENSE: MISUSE OR MODIFICATION

6. Was Tank 4 misused or modified after it left Chart's possession in a way that was so highly extraordinary that it was not reasonably foreseeable to Chart?

____ Yes ____ No

If you answered yes to question 6, then answer question 7. If you answered no, skip question 7 and go to question 8.

7. Was the misuse or modification the sole cause of Plaintiffs' harm?

____ Yes ____ No

Proceed to question 8.

IV. CLAIM 4: NEGLIGENT FAILURE TO RECALL OR RETROFIT

8. Did Chart know or should it reasonably have known that Tank 4's controller was dangerous or was likely to be dangerous when used in a reasonably foreseeable manner?

____ Yes ____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, do not answer questions 9 - 12 and go to question 13.

9. Did Chart become aware of this defect after the tank was sold?

____ Yes ____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, do not answer questions 10 - 12 and go to question 13.

10. Did Chart fail to recall or retrofit the tank's controller?

____ Yes ____ No

If your answer to question 10 is yes, then answer question 11. If you answered no, do not answer questions 11 - 12 and go to question 13.

11. Would a reasonable manufacturer under the same or similar circumstances have recalled or retrofitted the tank's controller?

____ Yes ____ No

If your answer to question 11 is yes, then answer question 12. If you answered no, do not answer question 12 and go to question 13.

//

//

12. Was Chart's failure to recall or retrofit the tank's controller a substantial factor in causing harm to plaintiffs?

Rosalynn Enfield: ____ Yes ____ No

Laura Parsell: ____ Yes ____ No

Kevin Parsell: ____ Yes ____ No

Chloe Poynton: ____ Yes ____ No

Adrienne Sletten: ____ Yes ____ No

Proceed to next page

V. COMPENSATORY DAMAGES

- *If you answered yes to either question 2 or 5 (as to at least one plaintiff), and no to questions 6 or 7, answer question 13 as to the plaintiffs for whom you answered yes in questions 2 and/or 5.*
- *If you answered no as to questions 2 and 5 as to every plaintiff or you answered yes to question 7, **and** you answered yes as to any plaintiff in question 12, answer question 13 as to the plaintiffs for whom you answered yes in question 12.*
- *If you answered no to questions 2 and 5 as to every plaintiff, or you answered yes to question 7, **and** you answered no to any of questions 8-11 **and** all of question 12, stop here, answer no further questions, and have the presiding juror sign and date this form on the last page.*

13. What are each plaintiff's damages?

Rosalynn Enfield:

Economic loss

Value of damaged/lost eggs: \$ _____

Noneconomic loss

Pain, suffering, and emotional distress: \$ _____

Rosalynn Enfield TOTAL \$ _____

Laura & Kevin Parsell:

Economic loss

Value of damaged/lost embryos: \$ _____

Noneconomic loss

Laura Parsell pain, suffering, and emotional distress: \$ _____

Kevin Parsell pain, suffering, and emotional distress: \$ _____

Laura & Kevin Parsell TOTAL \$ _____

Chloe Poynton:

Economic loss

Value of damaged/lost eggs: \$ _____

Noneconomic loss

Pain, suffering, and emotional distress: \$ _____

Chloe Poynton TOTAL \$ _____

Adrienne Sletten:

Economic loss

Value of damaged/lost eggs: \$ _____

Noneconomic loss

Pain, suffering, and emotional distress: \$ _____

Adrienne Sletten TOTAL \$ _____

Proceed question 14.

VI. APPORTIONMENT OF FAULT

14. Was Pacific Fertility Center negligent with respect to Tank 4?

____ Yes ____ No

If your answer to question 14 is yes, then answer question 15. If you answered no, insert the number zero next to Pacific Fertility Center in question 16.

15. Was Pacific Fertility Center's negligence a substantial factor in causing harm to the plaintiffs?

____ Yes ____ No

If your answer to question 15 is yes, then answer question 16. If you answered no, insert the number zero next to Pacific Fertility Center in question 16.

16. What percentage of responsibility for the plaintiffs' harm do you assign to:

Chart: _____ %

Pacific Fertility Center: _____ %

TOTAL 100 %

Only proceed to question 17 if you answered yes to question 12 above as to any plaintiff. If you answered no to question 11, stop here, answer no further questions, and have the presiding juror sign and date this form on the last page.

VII. PUNITIVE DAMAGES

17. Did Chart's failure to recall or retrofit Tank 4's controller constitute malice, oppression, or fraud?

____ Yes ____ No

If you answered yes, then answer question 18. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form on the last page.

18. Was the conduct constituting malice, oppression, or fraud committed by one or more officers, directors, or managing agents of Chart acting on behalf of Chart?

____ Yes ____ No

Proceed to the next question.

19. Did an agent or employee of Chart engage in the conduct with malice, oppression, or fraud?

____ Yes ____ No

If you answered yes, then answer question 20. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form on the last page.

20. Did one or more officers, directors, or managing agents of Chart authorize this conduct?

____ Yes ____ No

Proceed to the next question.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

21. Did one or more officers, directors, or managing agents of Chart know of this conduct and adopt or approve it after it occurred?

____ Yes ____ No

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Signed: _____ Presiding Juror

Dated: _____

After this verdict form has been signed, notify the clerk that you are ready to present your verdict in the courtroom.